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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAY 29 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Implementation of Sections 202(f), 202(i) and 301(l)  
of the Telecommunications Act of 1996 )

CS Docket No. 96-56

Cable Television Antitrafficking, Network Television,  
and MMDS/SMATV Cross-ownership Rules )

To the Commission:

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**Opposition  
To  
Petition For Reconsideration**

BellSouth Corporation ("BellSouth") hereby opposes the Petition For Reconsideration filed herein by the California Cable Television Association ("CCTA") on April 17, 1996. The Order (FCC 96-112) amends the Commission's rules relating to cable television cross ownership to conform them to the Telecommunications Act of 1996.<sup>1</sup>

CCTA complains that "[t]he Order precludes cable operators from acquiring in-region multichannel multipoint distribution service ('MMDS') licenses until the cable operator is 'subject to effective competition' while telephone companies may, without restriction, purchase and operate immediately MMDS stations in the areas where they provide telephone and video services."<sup>2</sup> CCTA

<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 101 Stat. 56, Section 401, §10(a) (1996) ("1996 Act").

<sup>2</sup> CCTA at 1.

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asks the Commission to “promulgate regulations that would preclude in-region local exchange carriers (‘LECs’) from acquiring and operating MMDS facilities in a particular geographic area until that area is subject to effective competition.”<sup>3</sup> CCTA is concerned that LECs will acquire all available MMDS licenses before incumbent cable operators are permitted to do so.<sup>4</sup>

CCTA has mischaracterized the Commission’s action. The Order does not impose the cable-MMDS cross-ownership prohibition, nor does it give LECs the right to acquire MMDS licenses. Cable operators were precluded by the Cable Act of 1992 from holding MMDS licenses in any portion of franchise areas served by the cable operators.<sup>5</sup> The Order merely amends the Commission’s rules to reflect the exception to that prohibition enacted by Congress in the 1996 Act.<sup>6</sup> Moreover, the right of LECs to acquire and operate MMDS stations existed prior to the Commission’s action<sup>7</sup> and was not even addressed in the Order.

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<sup>3</sup> CCTA at 2-3.

<sup>4</sup> CCTA at 3.

<sup>5</sup> *See In the Matter of Implementation of Sections 292(f), 202(I) and 301(I) of the Telecommunications Act of 1996: Cable Television Antitrafficking, Network Television and MMDS/SMATV Cross Ownership Rules*, CS Docket No. 96-56, Order (rel. Mar. 18, 1996), ¶5.

<sup>6</sup> 1996 Act §201(i).

<sup>7</sup> *See* 1996 Act §651(a)(1); *see also American Scholastic TV Programming Foundation v. F.C.C.*, 46 F.3d 1173 (D.C. 1995) (cable-telephone company cross-ownership ban not applicable to video programming provided via wireless cable).

CCTA's petition for reconsideration is, therefore, misplaced. It does not relate to an action taken by the Commission in this proceeding or to any issue addressed in the Order. It asks the Commission to address an entirely new issue and must, therefore, be denied. Furthermore, CCTA fails to explain how an action that merely conforms the text of the Commission's rules to the 1996 Act could warrant reconsideration.

Even if CCTA's petition were procedurally proper, it would fail on the merits. First, CCTA asks the Commission to adopt a rule that is contrary to the 1996 Act, which expressly confirms that common carriers, including LECs, can provide "video programming to subscribers using radio communication . . . ."<sup>8</sup> Congress was well aware of the potential for competition between LECs and cable operators in the provision of cable service. Indeed, Congress modified the definition of "effective competition" to include an LEC's offering of video programming services<sup>9</sup> and directed that the Commission not apply the cable-MMDS cross ownership prohibition "to any cable operator in any franchise area in which a cable operator is subject to effective competition . . . ."<sup>10</sup> Moreover, Section 613(a) of the Cable Act of 1992, as amended,<sup>11</sup> does not authorize the Commission to extend the MMDS cross ownership prohibition to LECs.

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<sup>8</sup> 1996 Act §651(a)(1).

<sup>9</sup> 1996 Act §301 to be codified at 47 U.S.C. §623(l)(1)(D).

<sup>10</sup> 1996 Act §301, to be codified at 47 U.S.C. §613(a)(3).

<sup>11</sup> Id.

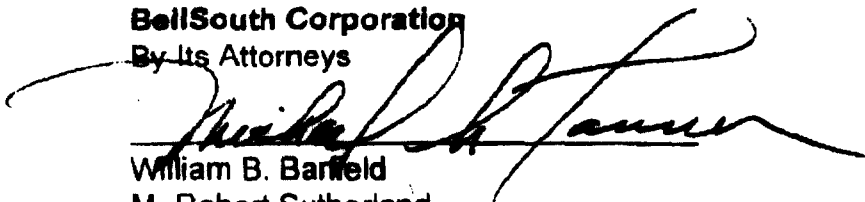
Second, adoption of the rule requested by CCTA would impede the introduction of effective competition in the provision of multichannel video programming services. The financial resources and service reputations of LECs would make them substantial competitors against incumbent cable operators. If, however, LECs must delay entry until economic conditions support the construction of wireline broadband facilities, such facilities can be constructed, and necessary regulatory approvals can be obtained, effective competition may be delayed indefinitely in many markets. Elimination of the MMDS option for LECs would serve only to prolong the hegemony of incumbent cable operators in local markets.

Finally, incumbent cable operators are not unfairly disadvantaged by LECs' right to obtain MMDS licenses now. The MMDS prohibition does not prevent cable operators from addressing the relevant market, *i.e.*, multichannel video programming distribution, in their franchise areas. Indeed, incumbent cable operators already dominate those local markets. The purpose of the cross-ownership prohibition is to prevent them from maintaining their dominant positions by foreclosing potential competitors' access to MMDS licenses. Such potential competitors include LECs.

For the foregoing reasons, the Commission should deny CCTA's petition  
for reconsideration.

Respectfully submitted,

**BellSouth Corporation**  
By Its Attorneys



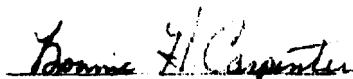
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May 29, 1996

**CERTIFICATE OF SERVICE**

I, Bonnie H. Carpenter, hereby certify that on this 29th day of May, 1996, I caused the foregoing ***Opposition to Petition For Reconsideration*** to be served by first-class mail, postage prepaid, to the parties listed on the attached service list.

  
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